

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DANIEL CAGEY,

Plaintiff,

vs.

KATHY NELSON and MONTANA
STATE PRISON,

Defendants.

CV 19-00031-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

Plaintiff Daniel Cagey, a state prisoner proceeding without counsel, filed a Complaint alleging his First and Fourteenth Amendment rights were violated when Officer Kathy Nelson damaged his eagle feathers while packing his property. (Complaint, Doc. 2 at 6.) On July 16, 2019, the Court issued an Order finding that the Complaint failed to state a plausible federal claim for relief and as such, was subject to dismissal. Mr. Cagey was given until August 16, 2019 to file an amended complaint and he was specifically advised that if he failed to correct the defects set forth in the Court's Order the case would be recommended for dismissal. (Doc. 5.) Mr. Cagey has not filed an amended complaint.

Accordingly, for the reasons set forth in the Court's July 16, 2019 Order (Doc. 5), the Court finds that Mr. Cagey has failed to state a federal claim upon

which relief may be granted, and therefore issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED for failure to state a federal claim.
2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.
4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Cagey failed to state a claim upon which relief may be granted.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Cagey may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made

to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 26th day of August, 2019.

/s/ John Johnston
John Johnston
United States Magistrate Judge

under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Cagey is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.